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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 DUNCAN K. ROBERTSON,

10 Plaintiff,

11 v.

12 GMAC MORTGAGE, LLC, *et al.*,

13 Defendants.

No. C12-2017MJP

ORDER

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15 This matter comes before the Court under LCR 3(e). Plaintiff has filed a “Motion
16 to Recuse” the Honorable Marsha J. Pechman in the above-captioned matter. Dkt. # 164. Judge
17 Pechman declined to recuse herself voluntarily, and the matter was referred to the undersigned
18 for review.

19 Section 455 of title 28 of the United States Code governs the disqualification of a
20 judicial officer. It states in relevant part: “Any justice, judge, or magistrate judge of the United
21 States shall disqualify himself in any proceeding in which his impartiality might reasonably be
22 questioned.” Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:

23 Whenever a party to any proceeding in a district court makes and files a timely and
24 sufficient affidavit that the judge before whom the matter is pending has a personal
25 bias or prejudice either against him or in favor of any adverse party, such judge
26 shall proceed no further therein, but another judge shall be assigned to hear such
proceeding. The affidavit shall state the facts and the reasons for the belief that
bias or prejudice exists

A judge must recuse himself if a reasonable person would believe that she is unable to be

ORDER

1 impartial. Yagman v. Republic Insurance, 987 F.2d 622, 626 (9th Cir. 1993). A litigant cannot,
2 however, use the recusal process to remove a judge based solely on adverse rulings in the
3 pending case: the alleged bias must result from an extrajudicial source. United States v.
4 Studley, 783 F.2d 934, 939 (9th Cir. 1986).

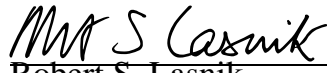
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6 Plaintiff argues that Judge Pechman's rulings regarding the existence of federal
7 jurisdiction and the adequacy of certain claims are unsupported or contrary to law and can be
8 explained only by a presumption of bias or prejudice against plaintiff. Despite the fact that
9 plaintiff clearly disagrees with Judge Pechman's rulings, he has not shown that they were so
10 legally, factually, or procedurally incorrect as to give rise to an inference of bias.¹ Given the fact
11 that plaintiff waited until ten days before trial and after Judge Pechman had ruled against him on
12 a number of key issues to request reassignment of the case, the risk that the litigant is using the
13 recusal motions for strategic purposes is considerable. See Ex Parte American Steel Barrel Co.
14 and Seaman, 230 U.S. 35, 44 (1913). Because a judge's conduct in the context of judicial
15 proceedings does not constitute the requisite bias under 28 U.S.C. § 144 or § 455 if it is
16 prompted solely by information that the judge received in the context of the performance of her
17 duties as the presiding judicial officer, plaintiff has not met his burden of showing an appearance
18 of bias.²

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22 ¹ Objections to a judge's decisions are properly raised through a motion for reconsideration
23 and/or an appeal, not a motion to recuse.

24 ² Plaintiff's counsel argues that Judge Pechman has erred in other cases involving the Deed of
25 Trust Act or the certification of questions to the Washington Supreme Court and that Judge Pechman
26 "dismisses claims by borrowers more often than do federal district courts generally." Dkt. # 166.
Plaintiff has not shown how a perceived error in another case harmed him. Nor does a judicial officer's
consistent dismissal of a certain type of claim on reasonable grounds raise a presumption of prejudice
under 28 U.S.C. § 144 or § 455.

1 Having reviewed plaintiff's motion and the remainder of the record, the Court
2 finds that Judge Pechman's impartiality cannot reasonably be questioned. There being no
3 evidence of bias or prejudice, plaintiff's request to remove Judge Pechman from this matter is
4 DENIED.
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7 Dated this 6th day of January, 2014.

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9 Robert S. Lasnik
10 United States District Judge
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